

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING  
SEPTEMBER 8, 2004**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 8, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Paul Schultz  
Walter Tarmann  
Walter Schmidt  
Darryl Judson

**BOARD MEMBERS ABSENT:** Robert Bartholomew

**SECRETARY TO THE BOARD:** Peggy S. Pelikan

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Sheri Mount, Waukesha County Staff Member  
Joan Gucciardi, BA04:068, neighbor  
Carol Vandenberg, BA04:068, neighbor  
Louise Vandenberg, BA04:068, neighbor  
Daisy Gallagher, BA04:068, neighbor  
Mike Mangan, BA04:068, neighbor  
Charlotte Voigt, BA04:068, neighbor  
Richard & Kathy Hockwalt, BA04:068, neighbors  
Justin & Jennifer Hockwalt, BA04:068, neighbors  
Bill James, BA04:068, neighbor  
Brooks Eberlein, BA04:068, neighbor  
Scott Hill, BA04:068, neighbor  
James, Eberlein, BA04:068, neighbor  
Ed Cohen, BA04:068, neighbor  
John Baumann, BA04:065, petitioner  
Scott Salick, BA04:069, petitioner  
Ken Fantl, BA04:068, neighbor  
Karl Stahle, BA04:066, petitioner  
Kathy Gutenkunst, BA04:065 and BA04:069, attorney  
Chad Olson, BA04:069, landscape architect  
Michael Krueger, BA04:068, petitioner  
Mary & Jim Nowakowski, BA04:067, petitioners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

## SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann

*I make a motion to approve the Summary of the Meeting of August 25, 2004, with the following changes:*

*In the discussion of the Summary of the Meeting of August 11, 2004, in the case of BA04:061 Paul Schultz – John Leopold (owner), the first sentence was to be changed to read “It should be noted that Mr. Schultz excused himself from the Board of Adjustment meeting prior to the deliberations in this case because he was serving as the petitioner.” It should now be changed to read “It should be noted that Mr. Schultz excused himself from the Board of Adjustment meeting prior to discussing the decision in this case because he was serving as the petitioner.”*

*In the discussion of the Summary of the Meeting of August 11, 2004, in the case of BA04:062 Paul Schultz – Jeffrey and Kate Eineicher (owners), the first sentence was to be changed to read “It should be noted that Mr. Schultz excused himself from the Board of Adjustment meeting prior to the deliberations in this case because he was serving as the petitioner.” It should now be changed to read “It should be noted that Mr. Schultz excused himself from the Board of Adjustment meeting prior to discussing the decision in this case because he was serving as the petitioner.”*

The motion was seconded by Mr. Ward and carried with four yes votes. Mr. Schmidt abstained.

## NEW BUSINESS:

### **BA04:066 KARL W. STAHL**

Mr. Judson

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for **denial** of the request for a variance from Section 3.09 (I) Height requirements and **approval** of the request for a variance from Section 3.10 (I) (B) Floor Area Ratio and a special exception from Section 3.10 (4) Accessory Building Floor Area Ratio of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a new detached garage on the property, with the following conditions:

1. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division

staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road.

2. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
3. The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance from the height requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The approved request for a variance from the total floor area ratio and a special exception from the accessory building floor area ratio will permit the construction of a detached garage and allow the petitioner reasonable use of the property. The total floor area ratio and the accessory building floor area ratio are being slightly increased by the proposed garage; however, the existing garage and residence already exceed the total floor area ratio and the accessory building floor area ratio and the proposed garage causes only a small increase in percentage. Therefore, the proposal as requested, is within the purpose and intent of the Ordinance.

#### **BA04:067 MARY NOWAKOWSKI**

Mr. Judson

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report*

The motion was seconded by Mr. Tarmann and carried unanimously with four yes votes. It should be noted that Mr. Schmidt excused himself from the Board of Adjustment meeting prior to discussing the decision in this case because he is the cousin of the petitioner. He was not in the boardroom during the deliberation portion of the meeting.

The staff's recommendation was for **denial** of the request for a variance from Section 3.09 (I) Height requirements and **approval** of the request for a special exception from Section 3.10 (4) Accessory Building Floor Area Ratio of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a new detached garage on the property, with the following conditions:

1. The total accessory building floor area on the property must not exceed a total of 2,356 sq. ft.

This will provide an accessory building floor area ratio of 6.0 % as proposed.

2. The existing detached garage must be removed prior to the expiration date of the zoning permit for the proposed garage.
3. The garage must contain only one story and it must conform with the height requirements of the Ordinance, i.e. the maximum height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.; however, the maximum height of the garage may be increased by not more than ten (10) ft., providing all required offset and setbacks are increased by one (1) foot for each foot which the garage exceeds the height limit of 15 ft. The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirement noted above, and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
4. Lots 1, 2, 3, and 4 of Gietzens Addition must be combined by a Certified Survey Map. The Certified Survey Map would need to be approved by the Town of Oconomowoc and the Waukesha County Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit for the proposed garage.
5. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not to the neighboring properties or the road.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The property, once the lots are combined by Certified Survey Map, will allow enough space for the detached garage with the proposed height to be constructed in a location that would not require a variance from the height requirements. As stated previously, the Ordinance allows the maximum average height of a structure to be increased up to ten (10) additional feet, providing that all required offsets and setbacks are increased by one (1) foot for each foot which the structure exceeds the maximum average height limit. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The approved request for a special exception from the accessory building floor area ratio, with the recommended conditions, will permit the construction of a detached garage and allow the petitioner reasonable use of the property. The proposed garage is a reasonable size and would meet all of the locational requirements of the Ordinance. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA04:068 MICHAEL KRUEGER**

Mr. Tarmann

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report*

The motion was seconded by Mr. Judson and carried unanimously with four yes votes. It should be noted that Mr. Ward excused himself from the Board of Adjustment meeting prior to discussing the decision in this case due to a conflict of interest. He was not in the boardroom during the deliberation portion of the meeting.

The staff's recommendation was for **denial** of the request for variances from the shore and floodplain setback, and the offset requirements for the proposed retaining walls and patio, and the existing retaining walls for the following reasons:

It has not been demonstrated, as required for a variance, that denial of the requested variances for retaining walls would be unnecessarily burdensome on the property owner. Previously, there were no retaining walls on the property; therefore, any hardship that exists has been self-created. In addition, there are not unique physical conditions existing on the property, which are not self-created and which prevent compliance with the Ordinance. The physical limitations of the property and not the personal circumstances or desires of the property owner, are the basis for this test. Therefore, granting the requested variances would not be in conformance with the purpose and intent of the Ordinance.

**BA04:065 JOHN BAUMANN**

Mr. Schmidt

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report with the addition of the following condition:*

*Condition #6: A Declaration of Restrictions shall be prepared by the Planning and Zoning Division Staff stating the carriage house shall be used for personal storage only and that no human habitation of the carriage house shall be permitted must be recorded in the Waukesha County Register of Deeds office prior to the issuance of a zoning permit for the boathouse.*

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for **approval**, with the following conditions:

1. The total accessory building floor area on the property must not exceed a total of 2,246 sq. ft. This will provide an accessory building floor area ratio of 4.42% as proposed.
2. The zoning permit for the new residence must be issued prior to the issuance of a zoning permit for the proposed boathouse.

3. No zoning permits for the residence or the boathouse shall be issued until all conditions of the Waukesha County Board of Supervisors decision to amend the Year 2002 County Development Plan (File Number: 158-R-005) have been complied with.
4. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
5. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approved request for a special exception from the accessory building floor area ratio requirements, with the recommended conditions, will permit the construction of a boathouse and will allow the petitioner reasonable use of the property. The existing historical two-story carriage house consists of 2.95% accessory building floor area ratio; therefore, without the special exception the petitioners would be unable to construct any other accessory structures on the property. If the existing carriage house were one-story, the petitioners would be permitted to construct the proposed boathouse without the need for a special exception. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **BA04:069 SCOTT SALICK**

Mr. Schultz

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report with the following addition to the reasons:*

*In addition, the Board of Adjustment recommends to the Waukesha County Park and Planning Commission that they require that the previously existing grades be restored.*

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for **denial** of the request for variances from the shore and floodplain setback for the proposed retaining walls for the following reasons.

It has not been demonstrated, as required for a variance, that denial of the requested variances for retaining walls would be unnecessarily burdensome on the property owner. The property previously contained a one-story house that did not have an exposed basement and did not need extensive retaining walls. The only retaining wall that was necessary at that time was the lannon stone retaining wall that ran along the shoreline. Therefore, any hardship that exists has been self-created. A house could be designed for the lot that would not require such extensive retaining walls. In addition, there are not unique physical conditions existing on the property, which are not self-created and which prevent compliance with the Ordinance. The physical limitations of the property and not the personal circumstances or desires of the property owner, are the basis for this test. Therefore, granting the requested variances would not be in conformance with the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**NONE**

**ADJOURNMENT:**

Mr. Judson *I make a motion to adjourn this meeting at 8:45 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan  
Secretary, Board of Adjustment